

STATE OF MICHIGAN
COURT OF APPEALS

JANE MARIE OSTERHOUT,

Plaintiff-Appellee,

v

JOHN FRANCIS OSTERHOUT,

Defendant-Appellant.

UNPUBLISHED

October 25, 2011

No. 296813

Schoolcraft Circuit Court

LC No. 08-004105-DO

Before: STEPHENS, P.J., and SAWYER and K. F. KELLY, JJ.

PER CURIAM.

Defendant, John Francis Osterhout, appeals as of right from a judgment of divorce, arguing that the trial court erred in allocating the parties' debt and in ordering him to pay plaintiff, Jane Marie Osterhout, \$350 a month in spousal support over the next ten years. We affirm.

I. BASIC FACTS

The parties were married in 1981 and have two adult children. When plaintiff filed for divorce on October 24, 2008, her annual income was approximately \$30,000 and defendant's annual income was approximately \$45,000. Defendant's pension was valued at \$180,000 and is eligible for distribution in 2018 when he turns 60. Plaintiff's pension was valued at \$33,000. Like defendant, plaintiff is eligible to receive distributions when she turns 60 in 2022.

The marital home had been foreclosed upon and there was some question as to whether the mortgagee would pursue a deficiency judgment. At the time of the hearing, defendant was living in an apartment and paying approximately \$625 a month in rent and utilities. Plaintiff was living in a house that her parents helped her purchase and was paying approximately \$850 in rent, utilities, and other bills.

The parties owned a 2005 Hyundai Santa Fe. They sold it for \$10,000 and used that money to reduce the balance of the vehicle loan to \$4,000. At the time of the hearing, plaintiff was driving a vehicle purchased for her by her parents, but was attempting to repay them \$3,500.

The parties were discharged in bankruptcy in 2004 after amassing a large amount of credit card debt. Plaintiff had taken out nearly 15 credit cards, including some cards that were in defendant's name without his knowledge or consent. At the time plaintiff filed for divorce, the parties had once again amassed a debt in excess of \$37,000 on 18 credit cards. Defendant's

name was on several of the credit card accounts without his consent. Plaintiff testified that, although defendant had not given her permission to open the credit card accounts, he gave her “permission to do what I felt I had to do.” Plaintiff handled the couple’s finances and defendant refused to participate. She testified that the credit cards were used for household items, including cash advances to make house payments. In contrast, defendant refuted that the credit card debt was marital debt; rather, defendant attributed the debt to plaintiff’s lavish spending, including the acquisition of jewelry. Defendant only learned the extent of their debt in September 2008. Plaintiff admitted that she enjoyed acquiring and trading jewelry, but denied purchasing jewelry with the credit cards. Plaintiff testified that defendant was, in fact, aware of the existence of the various credit cards because he used the PayPal account and would mail credit card payments.

Although the trial court found that plaintiff was primarily responsible for the debt, it nevertheless concluded that the parties must share the net liability. As such, plaintiff was responsible for paying \$18,701.72 of the credit card debt and defendant was responsible for paying \$18,481.18 of the credit card debt. The trial court stated that defendant could not be relieved from paying his share of the debt because he refused to help plaintiff with the finances and was purposefully ignorant. Additionally, the trial court found that there was no evidence to show where, exactly, the money was spent. Nothing had established that the funds were spent on “anything other than to finance a lifestyle that exceeded what the parties earned.” However, recognizing that plaintiff was primarily responsible for the debt, the trial court awarded defendant 60 percent of his pension benefits and 50 percent of plaintiff’s pension benefits.

In awarding plaintiff \$350 a month in spousal support, the trial court reasoned that the parties had been married for 27 years, defendant’s income was greater, and defendant had been awarded a greater share of the pensions. The trial court stated that it tried to create a reasonable opportunity to allow the parties to “work their way out of the individual financial hole that they will find themselves in when this divorce becomes final.”

II. STANDARD OF REVIEW

In domestic relations actions, we must first review the trial court’s findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Berger v Berger*, 277 Mich App 700, 717; 747 NW2d 336 (2008). Findings of fact will not be reversed unless clearly erroneous. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990); *Woodington v Shokoohi*, 288 Mich App 352, 355; 792 NW2d 63 (2010); *Berger*, 277 Mich App at 717. A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake was made. *Beason*, 435 Mich at 805; *Johnson v Johnson*, 276 Mich App 1, 10-11; 739 NW2d 877 (2007). This Court gives special deference to a trial court’s findings when based on the credibility of the witnesses. *Johnson*, 276 Mich App at 11. If the trial court’s findings of fact are upheld, we must decide whether the dispositive ruling was fair and equitable in light of those facts. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks*, 440 Mich at 151-152; *Woodington*, 288 Mich App at 355.

III. MARITAL DEBT

Defendant first argues that the trial court's distribution of marital property and debt constituted a manifest abuse of discretion. He argues that it was unjust for the trial court to allocate to him any of the debt resulting from plaintiff's use of fraudulently-obtained credit cards. We disagree because under the circumstances presented here, the trial court did not abuse its discretion.

A judgment of divorce must include a determination of the property rights of the parties. MCR 3.211(B)(3); *Olson v Olson*, 256 Mich App 619, 627; 671 NW2d 64 (2003). The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Berger*, 277 Mich App at 716-717 (2008). To reach an equitable division, the trial court should consider the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996); *Sparks*, 440 Mich at 158-160; *Berger*, 277 Mich App at 717. The determination of relevant factors will vary with the circumstances of each case, and no one factor should be given undue weight. *Woodington*, 288 Mich App at 363-364; *Berger*, 277 Mich App at 717. The trial court must make specific findings regarding the factors it determines to be relevant. *Id.* Although "fault is an element in the search for an equitable division – it is not a punitive basis for an inequitable division. *McDougal*, 451 Mich at 90 (emphasis in original).

A trial court may require one party to pay a debt incurred during the course of the marriage if the trial court determines that the debt was incurred solely by that party. *Lesko v Lesko*, 184 Mich App 395, 401; 457 NW2d 695 (1990), overruled on other grounds 194 Mich App 284 (1992). The trial court is in the best position to determine whether a particular debt is marital in nature or whether it is separate debt properly allocated to one individual. *Lesko*, 184 Mich App at 401.

In rendering its decision, the trial court admitted that it "struggled with how to best proceed through this mountain of marital debt in light of the annual income of the parties and the lack of liquid assets available to this marriage." It further found there was no question that defendant "had to have some awareness of the existence of some of these credit cards" and although plaintiff was "primarily at fault for the extent of the financial crises that the parties find themselves in, the Defendant cannot insulate himself from any responsibility by having refused to engage in an financial discussions or decisions." Although the trial court noted the parties offered different explanations for how and why the debt was acquired, it concluded that "[b]ased on the entire record before the Court, there is nothing to establish that these funds were used for anything other than to finance a lifestyle that exceeded what the parties were earning." Recognizing that "it cannot be said that the Plaintiff did a very good job at managing the financial matter of the household or utilized sound judgment in how the marital monies were spent" defendant also "did not do a very good job at recognizing how and where the marital income was being expended." As such, "[t]he parties need to equitably share in the net liability here even though the Plaintiff is the specific party that acquired nearly 100% of the existing debt."

We conclude that the trial court's findings were not clearly erroneous. The parties' testimony was the only evidence of the cause of their credit card debt; no detail was produced at

trial. Plaintiff testified that the money was spent on household items, purchases for both plaintiff and defendant, and cash advances to make mortgage payments. She also testified that, while she did not have defendant's permission to open the accounts, defendant gave her general permission to "do what she felt she had to do" and that he did not help her in managing household finances. On the other hand, defendant claimed ignorance of the extent of the parties' debt and attributed fault to plaintiff's need to acquire jewelry. Given the conflicting testimony, we will defer to the trial court's determination regarding the credibility of the witnesses. *Johnson*, 276 Mich App at 11.

Nor did the trial court abuse its discretion in its ultimate distribution of the parties' assets and debts. The parties were married for 27 years. During that time, they both contributed financially to the marriage. Defendant earned a larger income, but the parties' stations in life, age, and health were relatively equal. The trial court correctly assessed plaintiff's misconduct and awarded ten percent more of defendant's pension to defendant to offset his responsibility for acquiring and paying the marital debt.

IV. SPOUSAL SUPPORT

Defendant next argues that the trial court erred in awarding plaintiff spousal support in the amount of \$350 a month for ten years. He maintains that the trial court is actually rewarding plaintiff for her fraudulent behavior. We disagree.

The award of alimony is in the trial court's discretion. MCL 552.23; *Berger*, 277 Mich App at 726. The objective of alimony is to balance the incomes and needs of the parties in a way that will not impoverish either party, and alimony is to be based on what is just and reasonable under the circumstances of the case. *Id.* Among the factors that should be considered are: (1) the past relations and conduct of the parties; (2) the length of the marriage; (3) the abilities of the parties to work; (4) the source and amount of property awarded to the parties; (5) the parties' ages; (6) the abilities of the parties to pay alimony; (7) the present situation of the parties; (8) the needs of the parties; (9) the parties' health; (10) the prior standard of living of the parties and whether either is responsible for the support of others; (11) contributions of the parties to the joint estate; (12) a party's fault in causing the divorce; (13) the effect of cohabitation on a party's financial status; and (14) general principles of equity. *Id.* at 726-727. The court should make specific factual findings regarding the relevant factors. *Myland v Myland*, ___ Mich App ___, ___ NW2d ___ (Docket No. 292868, issued November 23, 2010), slip op p 2.

The trial court made the same findings of fact for both the issue of the disposition of marital property and debt and the issue of spousal support. In awarding spousal support, the trial court noted that its main consideration "was to develop a financial scenario in which each party would have a realistic opportunity to work their way out of the individual financial hole that they will find themselves in when this divorce becomes final. The length of the marriage and the disparity in income were the most relevant considerations in the Court's determination that long term alimony at \$350/month for a ten year period is appropriate under all of the facts and circumstances involved here." As a result of this order, plaintiff's annual income will be approximately \$34,000 for the next ten years and defendant's annual income will be approximately \$40,000.

We conclude that the award of spousal support was equitable based on the property and debt awarded to the parties, the parties' contribution to the marital estate, the parties' ability to work, the length of the marriage, the disparity in income, and the parties' post-separation living circumstances. Although the trial court did not expressly state its specific finding for each relevant factor that it considered before awarding plaintiff spousal support, it sufficiently supported its ultimate determination. Moreover, save for defendant's pension, the marital property and debt were almost evenly distributed. After reviewing the record, we conclude that the trial court properly balanced the incomes and needs of the parties in such a way as to not impoverish either party, and that the award of spousal support was just and reasonable under the circumstances of the case. MCL 552.23; *Berger*, 277 Mich App at 726.

Affirmed. As the prevailing party, plaintiff may tax costs pursuant to MCR 7.219.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly